

REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT, herein the "Agreement," is made and entered into as of the _____ day of _____, 2008, by and between Redevelopment Agency of West Valley City, a body politic of the State of Utah, herein the "Buyer," and West Valley City, a municipal corporation of the State of Utah, herein referred to as "Seller".

R E C I T A L S :

- A. The Seller purchased on behalf of the Buyer and now owns approximately 1.8 acres of improved real property located at approximately 3350 South Mark IV Court (2900 West), in West Valley City, Salt Lake County, State of Utah, herein the "Property." The Property is more particularly described and depicted on the attached Exhibit "A," which is incorporated herein. For the purposes of this Agreement, the term "Property" shall include the Land and all of the Seller's right, title, and interest in and to all leases, privileges, rights-of-way, easements, appurtenances, and all other rights appurtenant to or connected with the beneficial use or enjoyment of the Land.
- B. The Seller desires to sell the Property to the Buyer, and the Buyer desires to purchase the Property from the Seller, upon the terms and conditions contained in this Agreement.

NOW, THEREFORE, in consideration of the covenants and promises contained in this Agreement, the Buyer and the Seller agree as follows:

A G R E E M E N T :

- 1. **Purchase of Property.** Subject to the terms and conditions of this Agreement the Seller agrees to sell the Property to the Buyer, and the Buyer agrees to purchase the Property from the Seller. The Seller hereby agrees to effect this purchase and sale transaction through the use of a Special Warranty Deed, subject only to non-delinquent taxes and assessments and the title and survey matters not expressly disapproved of by the Buyer in the manner set forth in this Agreement.
- 2. **Purchase Price.**
 - a. Purchase Price. The Purchase Price of the Property shall be Two Million Three Hundred Fifty Three Thousand Four Hundred Twenty Six Dollars and Seventy Four Cents (\$2,353,426.74), payable in United States currency.
 - b. Earnest Money. \$20,000 refundable earnest money to be paid to the Seller upon execution of this Agreement. The Earnest Money shall become non-refundable upon the expiration of the due diligence and inspection proceedings.
 - c. Balance of Purchase Price. The Buyer shall pay the entire Purchase Price, less the

Earnest Money, in cash at the Closing.

3. **Conditions to Closing.** The Closing shall not occur until each one of the following conditions precedent has been satisfied, at the Buyer's sole discretion, prior to the Closing; provided, however, that the Buyer is entitled to waive any of the conditions in writing.

- a. Title Insurance/Approval of Title. At the Closing, the title company shall be ready, willing, able, and irrevocably committed to issue a standard coverage owner's policy of title insurance in the amount of the Purchase Price and insuring the Buyer's fee simple ownership of the Property. The coverage of the title policy shall be subject only to nondelinquent taxes and assessments, standard exceptions contained in a standard owner's policy of title insurance, and such other title matters not expressly disapproved by the Buyer in the manner set forth in this Agreement. Within ten (10) days of the execution of this Agreement, the Seller shall cause the title company to prepare and deliver to the Buyer a title commitment covering the Property, along with copies of each of the exception documents appearing in the title commitment. The Buyer shall have thirty (30) days to review the title commitment and the exception documents. On or before the end of the thirty (30)-day period, the Buyer shall give the title company and the Seller written notice of any matters appearing in the title commitment of which the Buyer disapproves. If the Buyer fails to timely object in writing to any title matters, all title matters not disapproved in accordance with the terms of this Agreement shall be deemed approved as Permitted Exceptions. If the Buyer disapproves specific title matters in writing, the Seller shall then have ten (10) days to eliminate the disapproved matters. The thirty (30)-day time period may be extended once, for an additional thirty (30)-day time period, in writing, at the option of the Seller, with notice of such extension to be delivered in writing to the Buyer prior to the expiration of the existing thirty (30)-day period, or said extension option shall be deemed waived. If the Seller is unable or unwilling to eliminate such disapproved matters, then unless the Buyer elects to waive its disapproval of such title matters within ten (10) days of the expiration of said thirty (30)-day period (as the same may be once timely extended), this Agreement shall terminate. In that case, the earnest money shall be returned to the Buyer and each party shall bear its own respective costs and expenses, the parties shall split evenly any fees charged by the title company, and the parties shall be relieved of any further obligation to each other under this Agreement, except as otherwise provided herein.
- b. Inspections. From the effective date of this Agreement until its termination or closing, the Buyer and/or its agents shall have the right to enter upon the Property and, at the Buyer's sole cost, to physically survey, inspect, and map the Property; to conduct engineering, geological, environmental assessments and other tests; to determine zoning, building, and occupancy requirements for the Property; and to detect any defects or other problems in the Property. Buyer, in the conduct of its inspections and investigations, shall not interfere with any existing operations on the Property and shall repair or restore the Property to its original condition. Except that Buyer shall have the right to individually inspect each unit with reasonable notice as

required by lease. Buyer shall indemnify and hold the Seller harmless from and against any and all physical damage to the Property or personal injury to the Buyer and its agents, invitees and assigns resulting from the Buyer's entry onto and activities upon the Property. The Buyer shall have sixty (60) days from execution of this Agreement to conduct the inspections. The Buyer may, with the written permission of the Seller, extend the inspection time by sixty (60) days upon written notice to the Seller.

In order to facilitate the inspections Seller shall provide the following to the Buyer:

- (i) any and all current rent rolls, any historical rent rolls that are available, financial statements for at least the past three years, all existing leases and any other information or documentation including any other condemnation proceedings or notice of condemnation proceedings;
- (ii) a complete inventory of fixtures, equipment and personal property contained in or related to the apartment complex and included in the purchase of the Property;
- (iii) a current accounting of all rental deposits held by the Seller which will be conveyed to the Buyer at Closing.

- c. No Adverse Developments or Change. From the date of the execution of this Agreement to purchase the Property through the Closing, the Property and the condition of the title thereto shall not have been adversely affected as a result of legislative or regulatory change, casualty, riot, civil commotion, condemnation, requisition, embargo, order of abatement to clean up hazardous waste, act of God or war, or any other change that would, in the Buyer's reasonable discretion, adversely change or affect the Property or the condition of the title thereto, whether or not such adverse change is insured against. Should such an adverse change to the Property or to the condition of the title to the Property occur before the Closing, the Buyer may elect to permit the Seller, if the Seller is willing and able, to remedy the adverse change, or the Buyer or the Seller may elect to terminate this Agreement. If the Buyer elects to permit the Seller to remedy the adverse change, the Seller shall have Sixty (60) days to remedy such adverse change to the Buyer's satisfaction. If the Seller fails to timely and adequately remedy such adverse change or elects not to do so, this Agreement shall terminate. In that case, the earnest money shall be returned to the Buyer and each party shall bear its own respective costs and expenses, the parties shall split evenly any fees charged by the title company, and the parties shall be relieved of any further obligation to each other under this Agreement, except as otherwise provided herein.
- d. Environmental Assessment. The Buyer, at its own expense, may obtain an environmental assessment of the Property, and such environmental assessment and the environmental condition of the Property shall be acceptable to the Buyer, in the

Buyer's sole discretion. The indemnification, repair, and restoration requirement set forth above are applicable to the Buyer's environmental investigations. The time period within which the environmental assessment must be completed is the inspection period referenced above, and, if no environmental objection is made within said (as more fully described above), the environmental condition of the Property shall be deemed waived by the Buyer.

- e. Financing. The purchase of the Property is contingent upon Buyer obtaining adequate financing, in a form and at rates acceptable to Buyer, prior to the Closing Date, as it may be extended as provided in this Agreement. If Buyer is unable to secure financing which it deems to be acceptable by the Closing Date (as it may be so extended), then Buyer may terminate this Agreement by providing Seller written notice thereof within the following ten (10) days.
- 4. **Failure of Conditions.** If any condition precedent is not satisfied, and if such condition is not waived by the Buyer on or before the Closing Date, this Agreement shall terminate, and the Buyer shall not be obligated to purchase the Property. In such case, the earnest money shall be refunded and neither party shall have further rights or obligations hereunder, except as otherwise set forth herein.
- 5. **Closing.** The term "Closing" is used in this Agreement to mean the time at which the title company records the Deed in the office of the Salt Lake County Recorder. Subject to the extension rights provided herein, the Closing shall occur on or before July 31, 2008, unless the Buyer and the Seller mutually agree in writing to close the transaction on a later date, or unless otherwise provided for in this Agreement.
 - a. Buyer Deliveries. On or before the Closing Date, the Buyer shall deliver payment of the balance of the cash Purchase Price and a duly executed settlement statement to the Seller.
 - b. Seller Deliveries. On or before the Closing Date, the Seller shall deliver the following:
 - (i) The duly executed and acknowledged Special Warranty Deed in favor of the Buyer or such entity as the Buyer may direct, conveying fee title to the Property, free and clear of all liens and encumbrances, except for the Permitted Exceptions.
 - (ii) Such authority documents as the Buyer and the title company shall reasonably request to evidence the authority of each of the persons executing the Special Warranty Deed, and other Closing documents in behalf of the Seller.
 - (iii) A duly executed settlement statement.

- (iv) Original copies, as available, of all leases, subleases, contracts and easements relating to the Property. All such leases, subleases, contracts and easements shall be assigned to the Buyer at Closing.
 - (v) All security deposits of current tenants.
- c. Prorations. The following items shall be prorated as of the Closing Date:
 - (i) All water, sewer, and utility charges for the Property.
 - (ii) All nondelinquent real property taxes related to the Property, based on the fiscal year used by the taxing authority, if any are owing.
 - (iii) All levied or pending assessments affecting the Property.
 - (iv) Current rents received from the Property.

The Seller shall furnish to the Buyer sufficient information to enable the Buyer and the Seller to make the prorations required under this Agreement.
- d. Buyer's Costs. The Buyer shall pay the following items at or before the Closing:
 - (i) All escrow fees and recording costs at the Closing.
 - (ii) The cost of a standard ALTA title policy and the cost of any extended coverage to be added, at the discretion of the Buyer, to the standard ALTA title policy.
- e. Seller's Costs. The Seller shall pay no costs or fees at the Closing:
- f. Failure to Deliver.
 - (i) If the Buyer fails or refuses to deliver the required funds and documents at the Closing, the Seller may, at the Seller's option, extend the time for the Closing, or may, in writing, terminate this Agreement. Should the Seller elect to terminate this Agreement pursuant to this section, the Seller shall be entitled to retain the earnest money deposited by the Buyer as liquidated damages, refund the earnest money to the Buyer and commence an action for damages, or bring an action to compel specific performance by the Buyer. The Buyer shall be responsible for any escrow fees incurred. All other costs shall be borne by the party incurring the cost. The Seller expressly agrees that the liquidated damages collected by the Seller, action for damages, or action for specific performance pursuant to this section shall be the Seller's sole remedies for the Buyer's failure to perform or deliver at the Closing.
 - (ii) If the Seller fails or refuses to deliver a valid and acceptable Deed or such other documents as may be necessary for the Seller to perform at the Closing,

the Buyer may, at the Buyer's option, extend the time for the Closing, or may, in writing, terminate this Agreement. The Seller shall be responsible for all escrow and Closing costs, and the Buyer may take any legal action necessary to enforce the Buyer's rights, be made whole for damages caused by the Seller's default, and/or compel specific performance by the Seller.

6. Seller's Representations and Warranties.

- a. The parties expressly understand that each of the following representations and warranties and each of any others made herein is material, and that the Buyer is relying upon each of such representations and warranties as true and correct as of the date on which the parties executed this Agreement and as of the Closing Date, as though such representations and warranties had been made on each of such dates. As a condition to the Closing, the Seller hereby makes the following representations and warranties, in addition to any others made in this Agreement:
- (i) At the Closing, the Seller will be the sole owner of the Property and will hold title to the Property in fee simple, free and clear of all encumbrances, except for the Permitted Exceptions.
 - (ii) The Seller warrants that there is no pending claim, suit, or litigation that involves the Property.
 - (iii) The Seller has no knowledge of any condemnation proceedings having been instituted or threatened against all or any portion of the Property by any governmental entity other than the Buyer. Provide, however, that the Parties acknowledge that the Utah Department of Transportation ("UDOT") has made an offer to purchase a portion of the Property.
 - (iv) At the Closing, there will be no unpaid bills or claims in connection with the Property, except nondelinquent taxes and assessments.
 - (vi) This Agreement and the consummation of this transaction do not and will not contravene any provision of any judgment, order, decree, writ, or injunction, and will not result in a breach of, constitute a default under, or require consent pursuant to any credit agreement, lease, indenture, mortgage, deed of trust, purchase agreement, guaranty, or other instrument to which any of the persons or entities comprising the Seller is presently a party or by which any of the same or their respective assets are presently bound or affected.
 - (vii) All documents delivered to the Buyer by the Seller pursuant to this Agreement are true, correct, and complete originals or accurate copies of originals.
 - (viii) The Property has free and complete access to public streets.

- (ix) No hazardous waste or toxic substances have been stored on, released into, generated on, or deposited upon the Property or into any water systems on or below the surface of the Property, and the Property complies with all local, state, and federal hazardous waste laws, rules, and regulations.
- b. Except as otherwise specifically set forth in this Agreement, the Seller hereby specifically disclaims, and the Buyer hereby waives, any warranty, guaranty, or representation, oral or written, past, present, or future of, as to, or concerning: (i) the nature and condition of the Property, including, but not by way of limitation, the water, soil, and geology, and the suitability thereof and of the Property for any and all activities and uses that the Buyer may wish to conduct thereon; (ii) the manner, construction, condition, and state of repair or lack of repair of any improvements located thereon; (iii) the nature and extent of any right-of-way, lease, possession, lien, encumbrance, license, reservation, condition, or otherwise, except for any warranties contained in the Seller's deed; (iv) compliance of the Property or its operation with any laws, rules, ordinances, or regulations of any government or other body or with any covenants, conditions, or restrictions of record that may affect the Property; or (v) the presence or absence of any toxic or hazardous materials at the Property. THE SALE OF THE PROPERTY AS PROVIDED FOR IN THIS AGREEMENT IS MADE ON AN "AS-IS, WHERE-IS" BASIS, AND THE BUYER EXPRESSLY ACKNOWLEDGES THAT IN CONSIDERATION OF THE AGREEMENTS OF THE SELLER HEREIN, EXCEPT AS OTHERWISE SPECIFIED IN THIS AGREEMENT, THE SELLER MAKES AND HAS MADE NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF OWNERSHIP, EXISTENCE, QUALITY, QUANTITY, VALUE, CONDITION, HABITABILITY, MERCHANTABILITY, OR FITNESS FOR PARTICULAR PURPOSE OF THE PROPERTY. The Buyer agrees that, except as may otherwise be specifically provided in this Agreement, the Seller is not liable or bound in any manner by express warranties, representations, or statements made by the Seller or anyone acting or purporting to act on behalf of the Seller, pertaining or relating to the Property or its state of title. The Buyer further agrees and acknowledges that it is not relying upon any statement, information, or representation with respect to any matters relating to the aforesaid, other than those obtained by the Buyer from sources other than (i) the Seller or (ii) anyone acting or purporting to act on behalf of the Seller.

7. Risk of Loss.

- a. Casualty. If, prior to the Closing Date, the Property or any portion thereof is damaged by fire, acts of God, or other casualty or cause, the Buyer shall have the right to terminate this Agreement.

- b. **Termination of Agreement.** If the Buyer terminates this Agreement under this section, except as otherwise provided herein, the parties shall be released from all further obligations and liabilities under this Agreement, except for the obligation to pay the title company's cancellation fee, if any, which shall be borne equally by the parties. All other costs and expenses shall be borne by the party incurring the cost or expense and the earnest money shall be returned to the Buyer.
8. **Brokerage Commissions.** Neither the Seller nor the Buyer are represented by real estate agents or brokers in this transaction and hereby agree to each indemnify the other party against any claims of brokerage fees or commission made through the party.
9. **Additional Documents.** Both the Buyer and the Seller agree to execute all other documents and to do such other acts as may be reasonably necessary or proper in order to consummate the transaction contemplated by this Agreement.
10. **Notices.** All notices, requests, demands, and other communications required under this Agreement, except for normal, daily business communications, shall be in writing. Such written communication shall be effective upon personal delivery to any party or upon being sent by overnight mail service; by facsimile (with verbal confirmation of receipt); or by certified mail, return receipt requested, postage prepaid, and addressed to the respective parties as follows:

If to the Seller: West Valley City
 3600 Constitution Blvd.
 West Valley City, UT 85119

If to the Buyer: Redevelopment Agency of West Valley City
 West Valley City
 3600 Constitution Blvd
 West Valley City, Utah 84119

With a copy to: Attn: City Attorney
 West Valley City
 3600 Constitution Boulevard
 West Valley City, Utah 84119

Either party may change its address for purposes of this Agreement by giving written notice to the other party.

11. **Attorney's Fees.** Should it become necessary for either party to enforce its rights under this Agreement, whether in suit or otherwise, the prevailing party shall be entitled to recover from the unsuccessful party reasonable attorney's fees and costs, including in house counsel, in addition to any other relief to which the party attempting to enforce its rights hereunder may be entitled.

12. **Modification.** Neither party to this Agreement may amend or modify this Agreement, except in a writing executed by the parties hereto.
13. **Entire Agreement.** The parties expressly agree that this Agreement and the exhibits attached hereto constitute the full and complete understanding and agreement of the parties, and that this Agreement supersedes all prior understandings, agreements, and conversations between the parties, whether oral or written. Any prior negotiations, correspondence, or understandings related to the subject matter of this Agreement shall be deemed to be merged into this Agreement and the attached exhibits.
14. **Severability.** If any term or provision of this Agreement is invalid or unenforceable for any reason whatever, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Agreement.
15. **Captions and Headings.** The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement, and are not to be considered in interpreting this Agreement.
16. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original for all purposes, but all of which shall constitute but one and the same instrument.
17. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Utah.
18. **Assignability.** This Agreement shall bind and inure to the benefit of the assignees, heirs, and successors-in-interest of the Buyer and the Seller. Neither the Buyer nor the Seller shall assign its rights or delegate its obligations hereunder without the prior written consent of the other.
19. **Time of the Essence.** Time is of the essence with respect to the performance of the parties under this Agreement.
20. **Waiver.** A waiver by either party of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach.
21. **No Recording.** Neither party shall record this document with the Office of the Salt Lake County Recorder without the written permission of the other party.
22. **Merger.** Except for the terms and conditions contained in paragraph 6, above, none of the terms of this Agreement shall survive the Closing, but shall be merged into the Special Warranty Deed and other documents of conveyance.

IN WITNESS WHEREOF, the parties to this Agreement have executed this Agreement as of the day and year first above written.

BUYER:

Mayor

ATTEST:

City Recorder

SELLER:

Executive Director

ATTEST:

Secretary

APPROVED AS TO FORM
WVC Attorney's Office

By: _____

Date: _____

Exhibit "A"

Parcel A:

Beginning at a point 1064.5 feet West from the North Quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 163 feet; thence East 80.5 feet; thence South 497 feet; thence West 171 feet; thence North 427 feet; more or less, to the South line of Davis S. Butler property as referenced in Warranty Deed recorded in Book 6579, Page 74 as Entry No. 5402301; thence East along said South line 65.5 feet; thence North 233 feet; thence East 25 feet to the point of beginning.

Parcel B:

Beginning at a point 1064.5 feet West from the North Quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, running thence South 163 feet; thence East 80.5 feet; thence North 163 feet; thence West 80.5 feet to the point of beginning.

Excepting therefrom the following: Beginning at a point 1060 feet West from the North Quarter corner of Section 33, Township 1 South, Range 1 West, Salt Lake Base and Meridian, running thence South 233 feet; thence East 76 feet; thence North 233 feet; thence West 76 feet to the point of beginning.

Also excepting therefrom any portion lying within the bounds of 3500 South Street.